

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	JUDGE SARA LIOI
)	
Plaintiff,)	CASE NO. 1:19 CR 74
)	
v.)	
)	<u>GOVERNMENT’S SENTENCING</u>
TONY HENDERSON,)	<u>MEMORANDUM</u>
)	
Defendant.)	
)	
)	

The United States, by and through Justin E. Herdman, United States Attorney, and Assistant United States Attorney Ranya Elzein, respectfully submits this memorandum setting forth the United States’ position regarding sentencing for Defendant Tony Henderson (“Henderson”). For the following reasons, and for those to be articulated at the sentencing hearing, the United States respectfully requests the Court impose a sentence that is sufficient but not greater than necessary to afford adequate deterrence and promote respect for the law.

I. Factual Basis

On May 2, 2019, Henderson plead guilty, without a plea agreement, to the Indictment charging him with one count of Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. § 922(g). PSR ¶ 1, Doc. No. 13. The charge arises out of the following facts.

On November 7, 2018, officers detained Henderson because he matched the description of a suspect in an aggravated robbery. *Id.* ¶ 4. It was later determined that he was not involved in the robbery. *Id.* During the encounter, however, officers discovered a loaded firearm on his

person. *Id.* Henderson was walking with his ten-year-old daughter. *Id.* Henderson told officers that he took the firearm from his 16-year-old friend Charles, who had been involved in an altercation earlier that day. *Id.* Henderson now explains that he took the firearm from his teenage daughter earlier that day so that she would not get into trouble. *Id.* ¶¶ 9, 47.

II. Applicable Legal Standards

Familiar legal principles guide the Court’s sentencing determination. The advisory Guidelines range serves as “the starting point and the initial benchmark” and thus remains an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses. *Gall v. United States*, 552 U.S. 38, 49 (2007). The Court then considers the factors set forth in 18 U.S.C. § 3553(a).

III. Sentencing Guidelines Computation

The government agrees with the following Guidelines computation in the Presentence Investigation Report (“PSR”):

Count 1: Felon in Possession of a Firearm and Ammunition		
Base Offense Level	24	§ 2K2.1(a)(2)
Acceptance of responsibility	-3	§ 3E1.1(a)–(b)
Total Offense Level after Acceptance of Responsibility	21	

The PSR assigns Henderson a Criminal History Category III, making the applicable Guidelines range 46 to 57 months. *Id.* ¶¶ 33, 65.

IV. Application of Section 3553(a) Factors

A consideration of the Section 3553(a) factors warrants a sentence that is sufficient to deter Henderson from engaging in similar activity and promote respect for the law. Specifically, the nature and circumstances of the offenses are serious. The government acknowledges the unique circumstances surrounding Henderson’s possession of the firearm in that, as he now explains, he possessed it for a short period of time after taking it away from his teenage daughter.

Nevertheless, although the offense is not in and of itself a violent crime, possessing a firearm and ammunition around a ten-year-old certainly creates a risk of violence and poses a danger to the safety of the community.

Such behavior is concerning given Henderson's violent criminal history. He has four Domestic Violence convictions involving the same victim, three of which are felonies. PSR ¶¶ 23, 28–30, Doc. No. 13. The convictions involved Henderson striking the victim, choking her, punching her, and touching a steak knife to her side. *Id.* Additionally, his 2009 conviction for Receiving Stolen Property involved Henderson receiving, retaining, or disposing of a stolen firearm. *Id.* ¶ 24. These prior convictions demonstrate Henderson's tendency for violence, and his inability to correct his criminal behavior demonstrates his disrespect for the law and a likelihood of recidivism. Henderson's prior record, coupled with the nature and circumstances of the offense, therefore require a sentence that is sufficient but not greater than necessary to afford adequate deterrence to Henderson and promote respect for the law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August 2019, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Ranya Elzein

Ranya Elzein

Assistant U.S. Attorney